

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CRAIG CUNNINGHAM, on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

LOFT ASSOCIATES, LLC d/b/a CHEDDAR
EXPRESS, Defendant.
-----X

Case No: 2:17-CV-02110-
ADS-GRB

DEFENDANT LOFT ASSOCIATES, LLC D/B/A CHEDDAR EXPRESS' ANSWER

Defendant Loft Associates, LLC d/b/a Cheddar Express ("Cheddar"), by its undersigned counsel, answers plaintiff Craig Cunningham's, on behalf himself and all others similarly situated (the "Plaintiff"), complaint (the "Complaint") as follows:

RESPONDING TO THE COMPLAINT'S ALLEGATIONS

1. Cheddar denies the allegations set forth in paragraph 1 of the Complaint and refers all questions of law to the Court for determination.
2. Cheddar denies the allegations set forth in paragraph 2 of the Complaint and refers all questions of law to the Court for determination.
3. Cheddar lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in paragraph 3 of the Complaint.
4. Cheddar admits the allegations set forth in paragraph 4 of the Complaint.
5. Cheddar admits the allegations set forth in paragraph 5 of the Complaint.
6. Cheddar admits the allegations set forth in paragraph 6 of the Complaint.

7. Cheddar denies the allegations set forth in paragraph 7 of the Complaint, if any, and refers the Court to the statute referenced therein for its true and accurate content.

8. Cheddar denies the allegations set forth in paragraph 8 of the Complaint, if any, and refers the Court to the statute referenced therein for its true and accurate content.

9. Cheddar denies the allegations set forth in paragraph 9 of the Complaint, if any, and refers the Court to the statute referenced therein for its true and accurate content.

10. Cheddar denies the allegations set forth in paragraph 10 of the Complaint and refers all questions of law to the Court for determination.

11. Cheddar denies the allegations set forth in paragraph 11 of the Complaint and refers all questions of law to the Court for determination, and refers the Court to Exhibit A annexed to the Complaint for its true and accurate content.

12. Cheddar denies the allegations set forth in paragraph 12 of the Complaint and refers all questions of law to the Court for determination.

13. Cheddar denies the allegations set forth in paragraph 13 of the Complaint and refers all questions of law to the Court for determination.

14. Cheddar denies the allegations set forth in paragraph 14 of the Complaint and refers all questions of law to the Court for determination.

15. Paragraph 15 of the Complaint does not set forth any factual allegations to which a response is necessary but to the extent one is required, Cheddar denies the

allegations set forth therein and refers all questions of law to the Court for determination.

16. Cheddar denies the allegations set forth in paragraph 16 of the Complaint and refers all questions of law to the Court for determination.

17. Cheddar denies the allegations set forth in paragraph 17 of the Complaint and refers all questions of law to the Court for determination.

18. Cheddar denies the allegations set forth in paragraph 18 of the Complaint and refers all questions of law to the Court for determination.

19. Paragraph 19 of the Complaint does not set forth any factual allegations to which a response is necessary but to the extent one is required, Cheddar denies the allegations set forth therein and refers all questions of law to the Court for determination.

20. Cheddar denies the allegations set forth in paragraph 20 of the Complaint and refers all questions of law to the Court for determination.

21. Cheddar denies the allegations set forth in paragraph 21 of the Complaint and refers all questions of law to the Court for determination.

22. Cheddar denies the allegations set forth in paragraph 22 of the Complaint and refers all questions of law to the Court for determination.

23. Cheddar denies the allegations set forth in paragraph 23 of the Complaint, including subdivisions (a)-(e), and refers all questions of law to the Court for determination.

24. Cheddar denies the allegations set forth in paragraph 24 of the Complaint and refers all questions of law to the Court for determination.

25. Cheddar denies the allegations set forth in paragraph 25 of the Complaint and refers all questions of law to the Court for determination.

26. Cheddar denies the allegations set forth in paragraph 26 of the Complaint and refers all questions of law to the Court for determination.

ANSWERING THE FIRST CAUSE OF ACTION

27. Cheddar repeats, reiterates and realleges each and every response set forth above as though fully set forth at length herein.

28. Cheddar denies the allegations set forth in paragraph 28 of the Complaint and refers all questions of law to the Court for determination.

29. Cheddar denies the allegations set forth in paragraph 29 of the Complaint and refers all conclusions of law to the Court for determination.

30. Cheddar denies the allegations set forth in paragraph 30 of the Complaint and refers all conclusions of law to the Court for determination.

31. Cheddar denies that the Plaintiff and the putative class members are entitled to any of the relief sought.

DEFENSES

32. The Complaint fails to state a claim upon which relief can be granted.

33. The Plaintiff's claims and the claims of the putative class members are barred by the statute of limitations.

34. The claims set forth in the Complaint are barred, in whole or in part, by the doctrine(s) of waiver, laches and/or estoppel.

35. The claims set forth in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

36. The claims set forth in the Complaint are barred, in whole or in part, by consent, acquiescence and/or release.

37. The Plaintiff and/or the putative class members lack standing to bring the claims alleged in the Complaint.

38. The Plaintiff and/or the putative class members consented to receiving the text message(s) attached to the Complaint as Exhibit A.

39. To the extent Cheddar is found liable for all or part of the claims set forth in the Complaint, other parties and/or third parties are liable for contribution either in whole or in part.

ADDITIONAL DEFENSES

40. Cheddar respectfully reserves the right to assert additional defenses based on information learned or obtained during discovery.

WHEREFORE, Cheddar demands judgment dismissing the Complaint in its entirety and awarding Cheddar attorneys' fees, costs and disbursements incurred in

this action, together with such other and further relief as this Court deems just, equitable and proper.

Dated: East Meadow, New York
July 14, 2017

CERTILMAN BALIN ADLER & HYMAN, LLP

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Nicole L. Milone

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